

# NPDES Permits and Alaska 301(h) Facilities

U.S. EPA, Region 10

Water Division, NPDES Permitting Section

January 28, 2020

# Agenda

- Opening Remarks (Susan Poulsom)
- Introductions (All)
- Meeting Goals (Jenny Wu)
- NPDES Permits and 301(h) Waiver Processes (Joseph Ziobro)
- 301(h) Waivers Overview and Regulations (Jamey Stoddard)
- 301(h) Waiver Information Requirements for Defensible Decisions (Joseph Ziobro)
- Next Steps (Jenny Wu)
- Discussion and Questions (All)

# Meeting Goals

- Explain EPA Region 10's coordinated approach for small facilities in Alaska
- Share information about where EPA is in the process
- Provide background on 301(h) waiver process and requirements
- Review some of the information we need to make a determination
- Provide an opportunity to ask EPA questions

# NPDES Permits and 301(h) Waiver Processes

- Why is Region 10 focusing on 301(h) in Alaska?
  - Only EPA can (re)issue 301(h) modified NPDES permits.
  - All facilities present are covered under administratively continued NPDES permits
  - EPA Region 10 is committed to reducing its backlog of administratively continued permits by the end of 2022.
- Team Approach
  - Ensure timeliness, consistency, and transparency
  - Time schedules will differ



# EPA 301(h) Team

- Jamey Stoddard: Whittier, Pelican, and Wrangell
  - [Stoddard.jamey@epa.gov](mailto:Stoddard.jamey@epa.gov)/206-553-6110
- Jenny Wu: Skagway, Haines, and Ketchikan
  - [Wu.jennifer@epa.gov](mailto:Wu.jennifer@epa.gov)/206-553-6328
- Joseph Ziobro: Petersburg and Sitka
  - [Ziobro.joseph@epa.gov](mailto:Ziobro.joseph@epa.gov)/206-553-2723

# CWA 301(h) Overview and Regulations

- NPDES Permits
- 301(h) Regulatory Background
- 301(h) Facilities nationally and in Alaska
- Nine Criteria for 301(h) waivers

# CWA § 301(h)

- CWA requires an NPDES permit to discharge pollutants to waters of the US
- 1972 CWA amendments required publicly-owned treatment works to achieve secondary treatment standards by 1977
  - Technology-based treatment standard for BOD, TSS, pH (85% removal, 6.0-9.0)
- 1977 CWA amendments added Section 301(h)
- Allows EPA, in limited circumstances and with concurrence from the State, to issue NPDES permits which relax secondary treatment standards for POTWs that discharge into marine or estuarine waters [i.e., 301(h)-modified permit]
- Waiver only applies to conventional pollutants BOD, TSS, pH (30% removal); must meet WQS.

# CWA § 301(h)

- Must meet a set of nine (9) statutory criteria and corresponding regulations
  - CWA § 301(h)(1-9) and 40 CFR Part 125.58 - 125.68
- Facilities must have applied by Dec 29, 1982, to be considered eligible. No new 301(h) permits can be issued. Existing permits can be reissued.
- 301(h)-modified permits issued for 5-year term. Applicant must re-apply for 301(h) waiver at each NPDES renewal.

# CWA § 301(h)

- ~208 applicants made 1982 deadline
- ~87 withdrawn or no longer eligible
- ~76 applications denied
- ~45 applicants and permittees remain
- Facilities clustered in six states (MA, ME, NH, CA, HI, AK) and five US territories (Puerto Rico, American Samoa, Guam, Virgin Islands, Palau)
- Majority small facilities discharging <5 mgd. Exceptions: Hawaii (20 & 90 mgd), San Diego (158 mgd), Anchorage/Asplund (28 mgd).

# CWA § 301(h)

- R10 has nine 301(h) facilities, all in Alaska, mostly smaller communities in southeast
- All permits administratively continued

# CWA § 301(h)

North



South

Anchorage (58 mgd; ~290k)

Whittier (0.3 mgd; ~1k)

Skagway (0.63 mgd; ~1k;)

Haines (2.9 mgd; ~1.7k)

Pelican (0.09 mgd; ~100)

Sitka (1.8 mgd; ~8.7k)

Petersburg (1.2 mgd; ~2.7k)

Wrangell (0.54 mgd; ~2.5k)

Ketchikan (7.2 mgd; ~8.2k)<sup>2</sup>

*Note: Listed flows are facility-submitted design flows.*

# Nine 301(h) Criteria

- Must demonstrate compliance with nine (9) statutory criteria and corresponding regulations to be eligible for 301(h) waiver
- Not weight-of-evidence based, must continue to meet all criteria independently



# 301(h) Criteria

1. Must have applicable WQS for 301(h) pollutants BOD, TSS, pH [40 CFR 125.61]
2. Discharge must not interfere with attainment or maintenance of water quality which assures protection of public water supplies; assures the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife, and allows recreational activities in and on water [40 CFR 125.62]
3. Must establish and implement monitoring program [40 CFR 125.63]
4. Discharge must not result in any additional pollution control requirements on any other point source or nonpoint source [40 CFR 125.64]

# 301(h) Criteria

5. Applicable pretreatment requirements for sources introducing waste into such treatment works must be enforced [40 CFR 125.65]
6. Pretreatment program must demonstrate it either: has in effect a program that achieves secondary treatment equivalency, or that industrial sources are in compliance with all applicable pretreatment requirements, including numerical standards set by local limits [40 CFR 125.65]
7. Establish and implement toxics control program designed to eliminate entrance of toxics from nonindustrial sources [40 CFR 125.66]
8. No new or substantially increased discharges (TSS, BOD) from the point source above that specified in the permit [40 CFR 125.66]

# 301(h) Criteria

9. -Must achieve primary treatment (30% removal)

[40 CFR 125.60]

-Must meet State WQS and federal 304(a)(1) criteria at edge of initial mixing area (i.e., Zone of Initial Dilution)

[40 CFR 125.62]

-Estuarine receiving waters must support a balanced indigenous population of shellfish, fish and wildlife, and allow for recreation in and on the water....without regard to the presence or absence of a causal relationship between such characteristics and the 301(h) discharge

[40 CFR 125.59]

# Process

- Decision is made in Tentative Decision Document, follow NPDES public process outlined in 40 CFR 122.2 (hearings, response to comments, etc)
- Approval of waiver would renew the 301(h)-modified permit
- Denial of waiver would require eventual upgrade to secondary treatment, compliance schedule, jointly-issued NPDES permit with EPA/DEC until full secondary achieved (then DEC permit/facility)

# NPDES Permit Development Process

- General NPDES Permit Development Steps
  - Develop Draft Permit and Fact Sheet (*and 301(h) decision document*)
  - Coordinate/consult with facility, state, tribes, National Marine Fisheries Service, U.S. Fish and Wildlife Service, other stakeholders as appropriate
  - Develop supporting documents as appropriate (e.g., Biological Evaluation)
  - Public notice the draft permit (*and tentative 301(h) decision document*)
  - Conduct public hearings, review and respond to public comments; revise as appropriate
  - Obtain state certification
  - Issue/reissue permit (*and final 301(h) decision document*)

# Application and 301(h) Questionnaire

- Decisions are based on information provided in permit application and required questionnaire
- Data/info/studies are critical for making defensible determinations
- More analysis required for “large applicants”
  - *“Large applicants have a population contributing to its wastewater treatment facility of at least 50,000 **OR** a projected average dry weather flow of its discharge of at least 5.0 million gallons per day (mgd, 0.22 cubic meters/sec).” [40 CFR 125.58(c)]*
- Recognition that applications were submitted years ago

# Application Process

- Applications must include signed, completed NPDES standard application form 2A and a completed Application Questionnaire (Appendix to Subpart G of Part 125) – *required for both small and large applicants*
- Renewals (40 CFR § 125.59(c)(1-4):
  - *“...applications for permit renewal shall support continuation of the modification by supplying to EPA the results of studies and monitoring...during the life of the permit.”*
  - *“Upon a demonstration meeting the statutory criteria...the permit may be renewed.”*

## Title 40: Protection of Environment

### PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

#### Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

##### APPENDIX TO SUBPART G OF PART 125—APPLICANT QUESTIONNAIRE FOR MODIFICATION OF SECONDARY TREATMENT REQUIREMENTS

OMB Control Number 2040-0088 Expires on 2/28/96 Public reporting burden for this collection of information is estimated to average 1,295 - 19,552 hours per response, for small and large applicants, respectively. The reporting burden includes time for reviewing instructions, gathering data, including monitoring and toxics control activities, and completing and reviewing the questionnaire. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing the burden, to Chief, Information Policy Branch, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (2136), Washington, DC 20460 and Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for EPA, Washington, DC 20503.

#### I. INTRODUCTION

1. This questionnaire is to be submitted by both small and large applicants for modification of secondary treatment requirements under section 301(h) of the Clean Water Act (CWA). A small applicant is defined as a POTW that has a contributing population to its wastewater treatment facility of less than 50,000 and a projected average dry weather flow of less than 5.0 million gallons per day (mgd, 0.22 cubic meters/sec) [40 CFR 125.58(c)]. A large applicant is defined as a POTW that has a population contributing to its wastewater treatment facility of at least 50,000 or a projected average dry weather flow of its discharge of at least 5.0 million gallons per day (mgd, 0.22 cubic meters/sec) [40 CFR 125.58(c)]. The questionnaire is in two sections, a general information and basic requirements section (part II) and a technical evaluation section (part III). Satisfactory completion by small and large dischargers of the appropriate questions of this questionnaire is necessary to enable EPA to determine whether the applicant's modified discharge meets the criteria of section 301(h) and EPA regulations (40 CFR part 125, subpart G).

# 301(h) Questionnaire

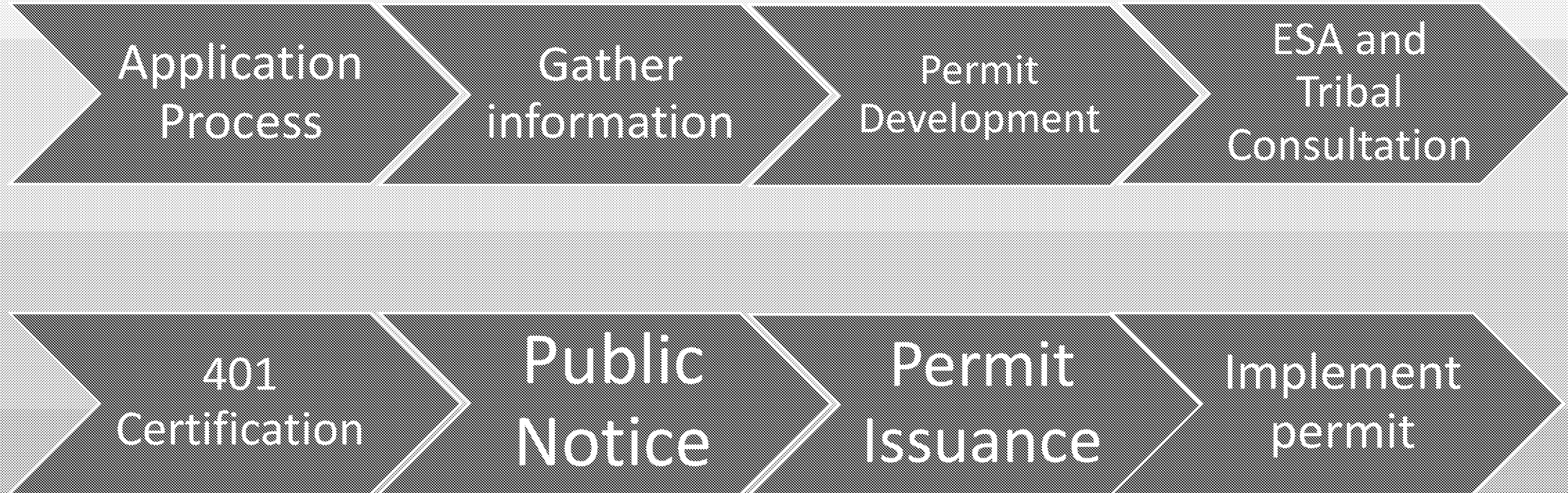
- [https://www.ecfr.gov/cgi-bin/text-idx?SID=ee727a1e2f1c517813823d32a49e0472&mc=true&node=ap40.24.125\\_168.1&rgn=div9](https://www.ecfr.gov/cgi-bin/text-idx?SID=ee727a1e2f1c517813823d32a49e0472&mc=true&node=ap40.24.125_168.1&rgn=div9)



# Data, Info, and Studies

- Data/info/studies must demonstrate if/how the facility/discharge:
  - Meets at least primary treatment
  - Complies with state water quality criteria/laws/designated water uses at the edge of ZID
  - Characterizes the receiving water and impacts of the discharge
  - Accounts for other sources of pollution into receiving waters
  - Impacts biological communities
- Quality data = defensible decisions

# Where are we in the 301(h) process?



# 301(h) Determination Timing

- Where are we?
  - File review is currently underway for 8 smaller communities in SE/SC
- No hard dates set
  - R10 will start with facilities for which the most robust information is available and work with others to obtain needed info
- Considerations for timing
  - Available information, quality/adequacy of documentation
  - Complexity of facility and receiving waters
- No EPA policy on 301(h) determinations
  - Decisions are case-by-case

# Take Home Messages

- EPA Region 10 is working on issuing administratively continued permits, including those with 301(h) waivers.
- Facilities with 301(h) waivers must provide sufficient information for permit writers to evaluate whether the waiver may be renewed.
- 301(h) regulations and applications are comprehensive and require data collection and studies.
- EPA has no blanket policies on granting or denying 301(h) waivers.

# EPA's Next Steps

- Work with facilities to obtain additional information on an individual basis
- Possible site visits
- Keep permittees informed on timelines and process, consistently and transparently

# Resources

- Amended 301(h) Technical Support Document (EPA 842-B-94-007)
- Region 10's Permitting Program
- Regulations:
  - 40 Code of Federal Regulations (CFR) 125.56 – 125.68 and Appendix to Subpart G

# Discussion and Q&A